

96-0404

H.E PROPOSED ORDER

Accordingly, Ameritech requests that the Commission find that it has satisfied this aspect of the Checklist requirements.

Commission Conclusion

The Commission concludes that Ameritech is providing access to NIDs as required by the Act and FCC Regulations.

c. Dark FiberMCI

MCI contends that Ameritech is required to offer dark fiber as an unbundled network element. MCI witness Marzullo argues that dark fiber constitutes "equipment or facilities" used to provide transport within the meaning of Section 3(45), and thus is a network element for purposes of the Act. MCI Ex. 2.0 at 13.

Ameritech

Ameritech acknowledges that the Commission addressed this issue in the MCI arbitration, finding that dark fiber is a network element under the Act. MCI Arbitration Decision, 96-AB-006,.

3. Poles, Ducts, Conduits, and rights-of-way

Checklist item (iii) requires Ameritech to provide non-discriminatory access to the poles, ducts, conduits and rights-of-ways owned or controlled by it at just and reasonable rates in accordance with the requirements of Section 224.

AT&T

AT&T argues that "poles, ducts, conduits, and rights of way" should be defined broadly to include various "pathways" such as entrance facilities; riser ducts; controlled environmental vaults; telephone equipment closets; remote terminal buildings, huts, or enclosures; cross-connect cabinets, panels, or boxes; and various other property. AT&T Ex. 7.0 at 4-5. AT&T witness Lester maintains that a broad definition of structure is necessary to enable new entrants to use their own facilities to reach potential customers and thus to develop a competitive market. *Id.* at 5. It is suggested that a broad definition of structure is consistent with the FCC's Order, which states that the directive of Section 224(f)(1) "seeks to ensure that no party can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications and cable equipment by those seeking to compete in those fields." First Report and Order, ¶ 1123. AT&T contends that Ameritech's narrower definition of structure is inconsistent with the Act, and that Ameritech is improperly seeking to impose various discretionary operational and administrative hurdles on competing carriers to make obtaining access to facilities unduly difficult.

AT&T also testified that it has had difficulties in its several years of dealing with Ameritech in connection with AT&T's provision of long distance service. *Id.* at 25-26. AT&T witness Lester

TAB E-32

96-0404

H.E PROPOSED ORDER

suggests that, in certain instances, Ameritech has denied access to its conduits, fallen short of AT&T's performance expectations or delayed in meeting its delivery dates, or imposed "make ready" costs as a means of passing on its own maintenance and repair costs. Id. 7.0 at 25-26. AT&T contends that Ameritech's history in this regard indicates that Ameritech may use its position to hamper the ability of new competing carriers to serve their customers. Id. at 26.

Staff

Early in this proceeding, Staff expressed a concern that Ameritech's testimony did not demonstrate whether any new entrants to the market currently were using its poles, ducts, conduits, and rights-of-way. Staff Ex. 3.02 at 6. Staff witness Gasparin recognized that Ameritech offers access to poles, ducts, conduits, and rights-of-way "from a contractual standpoint," but recommended that Ameritech provide a list of current and future parties attaching "from a usage standpoint." Staff Ex. 3.02 at 6. Absent such evidence, Staff suggested that Ameritech could satisfy the checklist requirement only on a "track B" basis. Id.

Staff subsequently noted that Ameritech has provided information on its actual provision of poles, ducts, conduits, and rights-of-way. Staff Ex. 3.02 at 4. Staff witness Gasparin acknowledged that Ameritech is providing such structure to CCT and that it has reached agreements to provide access to structure to MFS and TCG. Staff Ex. 3.02 at 4. Staff observed that Ameritech' Schedule 5 provided the quantity of conduit used by other carriers, but found that Schedule 5 did not provide data on the use of ducts, poles, or rights-of-way. Staff Ex. 3.02 at 4.

When Staff witness Terkeurst was cross-examined regarding whether Ameritech actually must furnish all of the items in checklist item (iii) in order to meet the checklist requirements, she stated that it was a judgment call, and that staff didn't "have a really firm policy on that at this time." Tr. 1474-75.

In its brief, Staff notes that Ameritech witness Dunny's Schedule 2 indicates Ameritech currently offers access to poles, conduits, and rights-of-way to CCT and has also reached agreement to offer access to these services to MFS and TCG. It is stated by Staff that, while ducts and conduits may serve the same function, as Ameritech indicates, the physical characteristics of the two may differ. Staff also observes that CCT witness Jennings testified that, while the CCT agreement addresses poles, ducts, conduits, and rights-of-way, CCT is using only poles at this time. Staff still takes no position in its brief with regard to whether Ameritech has met the requirements for the entire checklist item based on its provisioning of poles to CCT.

Ameritech

Ameritech contends that it satisfies the requirements of the Act by providing structure to attaching parties (1) on the same basis that it is provided to Ameritech (Section 271(c)(2)(B)(iii)), (2) at just and reasonable rates (id.), and (3) with the costs of any required modifications allocated in accordance with the FCC's rules (47 C.F.R. § 1.1416).

In direct testimony, Ameritech witness Bell explains that Ameritech facilitates nondiscriminatory access to its structure primarily in three ways: (1) by providing nondiscriminatory access to structure maps and records; (2) by using a fair methodology for

TAB E-33

96-0404

H.E PROPOSED ORDER

allocating spare capacity between competing attaching parties; and (3) by assuring nondiscriminatory treatment in completing the process steps, such as surveying and construction work necessary to deliver structure to attaching parties. Ameritech Ex. 6.0 at 3-6. Mr. Bell explains that access requests are made to Ameritech's Structure Access Coordinator and are subject to a "first in time, first in right" priority queue, which applies to all carriers including Ameritech. Ameritech Id. at 10. Ameritech will deny access to structure only for reasons of safety, reliability, or engineering limitations, or if a request would be inconsistent with state or local laws, such as zoning ordinances. Ameritech testifies that, in such circumstances, it will meet with the attaching party before denying a request. Ameritech Id. at 10-12. This process ensures the most efficient allocation of existing capacity and prevents attaching parties from reserving capacity. AI Ex. 6.0 at 12-14. If no spare capacity exists at the time of a given request, Ameritech will modify the relevant structure and recover the costs of modification in accordance with the FCC's rules, which are incorporated in the SGAT. Ameritech Id. at 14-16. Moreover, requests are governed by a well-defined process detailed in Ameritech's structure leasing guidelines. Bell further develops this position in his rebuttal and live testimony. Ameritech Id. at 20-24; AI Ex. 6.1 at 16-17, 24-25; Tr. 427, 429.

In the rebuttal phase of this proceeding, Ameritech testifies that significant quantities of structure are already in use by attaching parties. Ameritech Id. at 14. In 1996, for example, Ameritech received over 300 requests for over 380 miles of conduit from AT&T alone — requests that were far greater, in scale and in scope, than any project Ameritech has completed for itself in a comparable time frame. Ameritech has administered those requests expeditiously, notwithstanding AT&T's frequent cancellations, changes in requirements and priorities, and failures to prioritize its requests. Ameritech Id. at 14-15. Ameritech also testifies, in the later phases of this proceeding, that it is providing structure to several other parties including CCT. Tr. 439-42; Ameritech Id. at 12.

Ameritech maintains that AT&T's definition of the term "right of way" is overly broad and encompasses virtually every legal interest in property that Ameritech owns or controls. Ameritech Ex. 6.1 at 3. Mr. Bell states in his rebuttal testimony that this extreme definition is inconsistent with both the Act's purposes and the FCC's Order, which declares that "[t]he intent of Congress in section 244(f) was to permit cable operators and telecommunications carriers to 'piggyback' along distribution networks owned or controlled by utilities, as opposed to granting access to every piece of equipment or real property owned or controlled by the utility." First Report and Order, ¶ 1185. Ameritech also notes that AT&T's broad definition of rights-of-way has been rejected by this Commission. Dockets 96-AB-003 & 96-AB-004, Order at 29.

Commission Conclusion

This is an item that, like OSS, unforeseen problems can arise between Ameritech and a competing provider. Other than providing poles to CCT, Ameritech has not furnished poles, ducts, conduits or rights-of-way to any competing provider. At this point, the Commission is of the opinion that we cannot find that this checklist item is met based upon the Ameritech's provisioning of poles to CCT.

TAB E-34

96-0404

H.E PROPOSED ORDER

We are especially concerned about Ameritech's definition of structure which may be too narrow and, thus, may be inconsistent with the FCC's Order, which states that the directive of section 224(f)(1) of the Act "seeks to ensure that no party can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications and cable equipment by those seeking to compete in those fields." First Report and Order, ¶ 1123.

4. Unbundled Local Loops

Checklist item (iv) requires Ameritech to provide local loop transmission from the central office to the customer's premises, unbundled from local switching or other services. Section 51.319(a) of the FCC's Order defines a local loop network element as a cross-connect device used to connect loop facilities to inside wiring.

Staff

Staff states that based on the record evidence, Ameritech is providing local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.

Staff contends that the next inquiry is whether the manner in which Ameritech is providing local loops is consistent with the terms and conditions required by the 1996 Act, the FCC's Order and/or Commission Orders and Rules. With respect to this issue, Staff notes that on June 15, 1996, CCT filed an informal complaint regarding the local loop service installation intervals by Ameritech for CCT customers. Ameritech responded to the complaint on June 27, 1996.

Staff refers to the cross examination of CCT witness Scott Jennings, who testified that in May to June of 1996, CCT received complaints from consumers that it took Ameritech less time to provide service than it took CCT to provide service. He stated that Ameritech used this as a marketing tool to its customers. Tr. 849, lines 10-22. He did state that in his opinion, Ameritech's performance had improved since the May to June time period referenced in his testimony. He also stated that he did not believe that the performance criteria set forth in CCT's contract for the provisioning of unbundled loops was at parity with the time in which Ameritech provides unbundled loops to itself. Scott Jennings Cross, Tr. 860, lines 2-8; Tr. 857-60, through line 1.

Staff further states that while Ameritech provides unbundled loops to CCT through its agreement, there is no record evidence regarding whether the interconnection terms and conditions are consistent with the FCC requirements. Staff further states that the prices are not in compliance with Section 252(d), as is the case with network elements. Because of this, Staff recommends that the Commission find that Ameritech does not meet the checklist requirements for unbundled local loop transmission.

CCT

Although CCT witness Jennings addressed several loop provisioning issues in his pre-filed testimony, his subsequent testimony provides a substantial update and indicates that many of the issues have been resolved. Among the remaining issues, CCT stated that Ameritech does not apply

TAB E-35

96-0404

H.E PROPOSED ORDER

the same standards to itself for the provisioning of an unbundled network access line as it does for the provisioning of an unbundled loop to CCT. Tr. 860. CCT further testified that Ameritech does not satisfy the performance objective of restoring service within a 24-hour period. Tr. 862-63.

MFS

In its brief, MFS argues that the provisioning delays that Ameritech's competitors have experienced in obtaining access to unbundled elements, including loops, precludes competitors from offering service as attractive to customers as Ameritech's service, and therefore precludes a finding of nondiscriminatory access. MFS maintains that it too has had problems resolving provisioning issues with Ameritech, including unreasonably long provisioning intervals for DS1s and DS1, DS3, and ISDN cross connects; unreasonably long processing and installation; and shortages of personnel. As to Ameritech's testimony that its standard provisioning intervals for 1 to 4 DS1 loops was five business days, MFS contends that it has not received such efficient service. MFS Brief at 7-10. It is argued that, because Ameritech does not compare provisioning intervals and maintenance times for services that it provides both to itself and to its competitors, the Commission has no way of measuring Ameritech's performance. Until Ameritech can provide such data, MFS argues that the Commission should not find that it has satisfied the checklist. MFS Brief at 10-11.

MFS also proposes in its brief that Ameritech should be required to establish a separate affiliate to provision loops. MFS Brief at 11-14. MFS suggests that Ameritech's performance reports will be insufficient to ensure nondiscriminatory access, but that the possibility for discrimination would significantly decrease if Ameritech provided loops through an affiliate.

Sprint

In its brief, Sprint maintains that the testimony of CCT and MFS, companies already competing with Ameritech, demonstrates that Ameritech does not satisfy the checklist. Sprint points to the testimony of CCT witness Jennings, and to the testimony of MFS witness Durbin. Sprint Brief at 17-18 (citing MFS Ex. 1.0 at 26; CCT Ex. 1.0 at 8-9, 11-14; CCT Ex. 2.0 at 3-4).

TCG

In its brief, Teleport Communications Group echoed concerns similar to those raised by CCT. In reliance upon the testimony of AT&T witness Fonteix, TCG argues that Ameritech is attempting to control the growth of its competitors by establishing lengthy provisioning intervals for unbundled loops. TCG suggests that a lack of standards and a lack of deadlines permits Ameritech to avoid accountability for its failures to provide requested services in a timely manner. TCG Brief at 12 (citing AT&T Ex. 5.0 at 16-17).

Ameritech

Ameritech states that it offers documentation indicating that it currently furnishes unbundled loops to both MFS and CCT under negotiated agreements with each carrier. It states that it has already has provisioned 6,600 loops to CCT, and provides access to eight different unbundled loop types pursuant to the AT&T Agreement (and MFN clauses of other interconnection

TAB E-36

96-0404

H.E PROPOSED ORDER

agreements) and to other loop types through a bona fide request process. Ameritech Ex. 2.2, Schedule 1, at 4; Tr. 871. Ameritech states that each of its loop offerings provides a transmission path beginning at a distribution frame, or its equivalent, located in an Ameritech central office and ending at a NID at the end user's premises. Thus, it argues, these loop offerings fully comply with the applicable FCC Regulation, 47 C.F.R. § 51.319(a).

In response to CCT's complaint that Ameritech applies different standards for the provisioning of an unbundled network access line to its own customers than it does for the provisioning of an unbundled loop to CCT, Ameritech argues that, operationally, an unbundled network element — such as a loop — cannot reasonably be compared to bundled services — such as a network access line — that Ameritech provides to its end users. It asserts that its unbundled network access line connects a loop to central office equipment to provide "port" functions such as dial tone, access to the switched network and vertical features, as well as the ability to originate and receive calls. In contrast, it states that an unbundled loop provides only the functions associated with the loop while providing none of the port functions provided by a network access line. Moreover, it is contended, the provisioning of unbundled loops requires special steps, because more than one carrier is necessarily involved in providing local exchange service to the end user customer. These steps relate to the coordination of loop installation with other requests such as disconnection of related exchange services or the simultaneous establishment of number portability. Ameritech Ex. 3 at 32. Accordingly, Ameritech and CCT have agreed to specific provisioning intervals for unbundled loops that do not entail a comparison with bundled service provision intervals. Ameritech Ex. 2.2, Schedule 5, at 41. Accordingly, Ameritech and CCT have agreed to specific provisioning intervals for unbundled loops that do not entail a comparison with bundled service provision intervals. Ameritech Ex. 2.2, Schedule 5, at 41.

With respect to CCT's statement that Ameritech Illinois is not satisfying the performance objective of restoring service within a 24-hour period, Ameritech replies that in December 1996, the month the CCT agreement was signed, it completed repairs within 24 hours 79% of the time — a number consistent with the requirement in the agreement that repairs be completed within 24 hours an average of 80% of the time, and that the 24-hour repair rate not drop below 60% in any given month.

Commission Conclusion

The Commission finds that Ameritech has not established that it satisfies the checklist requirements for provision of unbundled loops. At this point in time, we are concerned about the provisioning delays that Ameritech competitors have experienced in obtaining access to unbundled elements, including loops, precludes competitors from offering service as attractive to customers as Ameritech Illinois' service. As previously stated in this Order, this Commission must be confident that the item can be provided to the requesting party on a non-discriminatory basis and at a quality level that is at parity with the quality that it itself receives. This is not the case at this point in time.

5. Unbundled Local Transport

Checklist item (v) requires Ameritech Illinois to provide local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.

TAB E-37

96-0404

H.E PROPOSED ORDER

In its brief, Staff argues that, while Ameritech provides unbundled local transport to CCT through its special access tariff, the only evidence regarding whether the terms and conditions on which it is provided are consistent with the FCC's Order is Ameritech Witness Dunny's statement that "[i]t would be my opinion it would be." Tr. 542. Further, Staff states, Ameritech's prices are higher than Section 252(d) requires. Staff Brief at 74 (citing Staff Ex. 4.00 at 18). Also, in Staff's view, Section 271(c)(1)(A) contemplates that the checklist items would be provided pursuant to binding agreements that have been approved under Section 252, rather than under an access tariff — unless the tariff has been incorporated into an agreement. In light of these factors, Staff recommends that the Commission find that Ameritech has not met the checklist requirements for unbundled local transport.

Ameritech

Ameritech contends that its offering of unbundled local transport fully complies with the competitive checklist, as well as FCC rules. It notes that Section 271(c)(2)(B)(v) requires provision of local transport "from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services," and asserts that trunk side local transport is precisely what it is providing. Ameritech also maintains that the term "Interoffice Transmission Facilities," as used in 47 C.F.R. § 51.319(d), and "Local Transport," as used in Section 271 of the Act, are the same thing. Ameritech Ex. 2.2 at 6. It suggests that it satisfies that provision by (1) offering both dedicated and shared transport, (2) offering all technically feasible transmission facilities, features, functions, and capabilities that have been requested by other carriers, either through negotiation or a Bona Fide Request process, (3) providing all technically feasible connections that have been requested by other carriers, and (4) offering its tariffed digital cross connect service, Ameritech Illinois Network Reconfiguration service (ANRS), for use with unbundled local transport — exactly the same tariffed service provided to interexchange carriers. *Id.* Ex. 2.2 at 7-9.

Ameritech presented evidence that it currently provides unbundled local transport to TCG, MFS, and CCT pursuant to its special access tariff. *Id.*, Schedule 1, at 9-10; *Id.*, Ex. 2.2, Schedule 2, at 5. In addition, Ameritech explains that it makes unbundled local transport available to other carriers via the MFN provisions of its interconnection agreements with those carriers. *Id.*, Schedule 1, at 9-10; *Id.*, Schedule 2, at 5. Ameritech contends that purchases of such elements cannot be separated from purchases of the same elements by the same carriers for other purposes, such as the provision of interstate access service under the FCC's expanded interconnection rules. *Id.*, at 5. Over time carriers will obtain local transport under their interconnection agreements.

Commission Conclusion

Ameritech is required by the 1996 Act and the FCC's regulations to provide unbundled local transport to requesting carriers. Unbundling of local transport/interoffice transmission facilities is required under Section 251(c)(3), and it is a separate "competitive checklist" item under Section 271. The FCC concluded that "incumbent LECs must provide interoffice transmission facilities on an unbundled basis to requesting carriers." First Report and Order, ¶ 439.

TAR E-38

96-0404

H.E PROPOSED ORDER

The FCC in its regulations has defined interoffice transmission facilities as follows:

[I]ncumbent LEC transmission facilities dedicated to a particular customer or carrier, or shared by more than one customer or carrier, that provide telecommunications service between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers. 47 C.F.R. § 51.319(d).

Ameritech is further required to provide, in addition to exclusive use of dedicated interoffice transmission facilities, "use of the features, functions and capabilities of interoffice transmission facilities shared by more than one customer or carrier" and to provide "all technically feasible transmission facilities, features, functions and capabilities that the requesting telecommunications carrier could use to provide telecommunications services." 47 C.F.R. § 51.319(d)(2).

As is the case with all network elements, the FCC's regulations provide that an incumbent LEC "shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends." 47 C.F.R. § 51.309(a). Ameritech further must provide nondiscriminatory access so that the quality of CLEC access to that element is at least equal to that which Ameritech provides itself. 47 C.F.R. § 51.311(b).

We find that Ameritech's position on shared transport is inconsistent with the FCC's Order and with the common understanding of shared transport. The Commission is of the opinion that shared/common transport is a network element required to be unbundled to satisfy the requirements of Section 251(c)(3). Therefore, this element of the checklist has not been met.

We must note that we disagree with Staff regarding their objection that Ameritech provides unbundled local transport to CCT through its special access tariff, and not its interconnection agreement with CCT. We agree with Ameritech regarding the availability of the unbundled local transport products contained in the AT&T Agreement, which MFS, TCG or CCT can purchase through the MFN clauses in their respective agreements. Furthermore, the prices set forth in the AT&T Agreement, along with the relevant terms and conditions, are available to CCT, MFS, and TCG through the MFN clauses in their agreements.

6. Unbundled Local Switching

Checklist item (vi) requires Ameritech Illinois to provide local switching unbundled from transport, local loop transmission, or other services. Furthermore, Section 251(c)(3) states that:

incumbent LECs have the duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An

TAB E-39

96-0404

H.E PROPOSED ORDER

incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

AT&T

In its brief, AT&T proposes that Ameritech must, in providing unbundled local transport, provide on an unbundled basis interoffice transmission facilities. AT&T notes that the FCC has defined such facilities to include those dedicated to a particular customer or carrier or shared by more than one customer or carrier. AT&T Brief at 40-41 (citing 47 C.F.R. § 51.319(d)). It is argued that Ameritech has redefined shared transport as a simple variant of dedicated transport, by requiring competing carriers to purchase dedicated transmission facilities and to arrange, in turn, to share them with other carriers. AT&T suggests that Ameritech refuses to join in such arrangements, precluding competitors from using facilities that carry Ameritech's own traffic, in violation of the nondiscrimination requirements of the Act. The FCC, AT&T contends, plainly contemplated that common transport would be a network element. AT&T Brief at 43 (citing First Report and Order, ¶ 258). AT&T states that Staff witness Jennings supports its view of common transport, and that any other reading of the law would damage competition and create inefficiencies. AT&T Brief at 44 (citing Tr. 1412-15). AT&T rejects Ameritech's proposal to provide common transport to purchasers of ULS or ULS-based platform combinations, in the form of wholesale usage or access, as necessary, reasoning that the proposal does not offer local transmission at forward-looking cost-based rates, as required by Sections 251(c)(3) and 252(d)(1). As to Ameritech's contention that the issue of whether shared transport includes common transport should be deferred to the FCC, AT&T maintains that the FCC already has made clear that it views shared transport to include common transport. Nor is there any other reason to defer the issue: the FCC has stated that state commissions are free to refine the definition of network elements. AT&T Brief at 46 (citing 47 C.F.R. § 51.317).

AT&T also argues in its brief that Ameritech prohibits purchasers of ULS from using ULS to provide terminating access services, including local call termination services and terminating access for 800 service calls, in violation of the FCC's and this Commission's conclusion that ULS purchasers are entitled to all exchange and exchange access revenues. AT&T Brief at 46-59 (citing First Report and Order, ¶ 363 n.772; Wholesale/Platform Order, Dockets 95-0458/95-0531, at 65). AT&T also contends that Ameritech imposes wholly improper charges on a purchasing carrier, including a "Centrex Common Block" charge and "billing development" charge — on ULS purchasers. As to the "common block" charge, AT&T argues that purchasers of ULS must pay for and receive all of the features and functions of the switch. Since the "common block" is an inherent part of the switch, there should be no additional charge for it. As to the "billing development" charge, AT&T states that such costs should be recovered in a competitively neutral manner by all users of the network, not simply by parties using the ULS service. AT&T Brief at 57-59.

CompTel

In its brief, CompTel contends that Ameritech has not yet offered a ULS element that complies with the requirements of the FCC's Interconnection Order. It argues that Ameritech's proposal would deny the ULS purchaser the ability to collect terminating access from IXC's (and from collecting both originating and terminating access in connection with 800 calls) absent the purchaser's accession to a convoluted transport arrangement, in violation of the Act, this

TAB E-40

96-0404

H.E PROPOSED ORDER

Commission's order in the AT&T/WorldCom case, and the FCC's rules defining unbundled network elements. CompTel Brief at 25-27. Specifically, CompTel argues, Ameritech's intends to impose its own terminating IX access charges for local switching in cases where carriers choose to terminate traffic over Ameritech's transport network — effectively denying the competing carrier the right to do so. CompTel maintains that, under Ameritech Illinois' arrangement, ULS purchasers could provide (and charge for) terminating access only where the IXC obtains transport service to the ULS via purchase of a dedicated unbundled transport facility from Ameritech. CompTel also contends, like AT&T, that Ameritech's ULS offering is flawed for failing to commit to provide customers with the information necessary to bill for terminating access.

CompTel also objects in its brief to Ameritech's proposed imposition of interexchange access charges — namely, the interstate carrier common line charge and 75% of the residual interconnection charge — in connection with the ULS platform. CompTel argues that these charges violate both Section 252(d)(1)'s requirement that unbundled network element charges be "based on cost" and this Commission's ruling in the Wholesale/Resale proceeding that Sections 251(c)(3) and 252(d)(1) preclude Ameritech from imposing access charges on purchasers of the ULS platform. CompTel notes Staff agrees with its position as to intrastate services, and urges the Commission to find that Ameritech's surcharges violate the Act.

CompTel further contends in its brief that Ameritech is refusing to provide true "shared transport," as required by Section 251(c)(3) and the FCC Interconnection Order, ¶¶ 440-43, 312. CompTel Brief at 30-36. It is argued that access to shared transport is essential because it gives ULS purchasers nondiscriminatory access to Ameritech's interoffice network and allows them to use the traffic routing instructions resident in the local switch to direct the entrant's local traffic to other end offices using the same trunk groups as Ameritech. The FCC's shared transport requirement, CompTel argues, does not mean only that Ameritech must permit a carrier purchasing dedicated transport to share that facility with other carriers, which it impliedly must do given that ILECs may not restrict the manner in which carriers use unbundled elements; it also means that Ameritech's must permit other carriers to share transmission facilities with itself. Ameritech's reading of the Act, however, does not permit competitors to take advantage of the efficiencies of its interoffice transport network; rather, it forces them to purchase dedicated transport and to construct a duplicate network. CompTel suggests that Staff concurs in this assessment. CompTel Brief at 34-36 (citing Staff Ex. 4.02 at 9-10). CompTel also argues that Ameritech's limitation on its ability to function as access provider violates the checklist requirement that local switching be provided "unbundled from transport, local loop transmission, or other services," Section 271(c)(2)(B)(vi), and that Ameritech's proposed charge for "Billing Development" violates the cost-based pricing standard for UNEs and should be recovered on a competitively neutral basis. CompTel Brief at 36-37.

MCI

In direct testimony, MCI witness Marzullo states that Ameritech does not offer "common transport" on an unbundled basis. MCI acknowledges that Ameritech offers "shared transport," but suggests that it amounts to nothing more than "dedicated transport" with a slight variation. MCI Ex. 2.0 at 12. MCI further contends that offering common transport on an unbundled basis is technically feasible, and that, while Ameritech Illinois provides common transport today as to its switched access service, it nonetheless refuses to do so with respect to unbundled transport. Id. at 13. MCI also testifies that Ameritech Illinois is not currently providing unbundled local switching

TAB E-41

96-0404

H.E PROPOSED ORDER

to any provider, although it has been requested pursuant to Section 251. Mr. Marzullo also argues that the MFS and CCT agreements do not contain provisions for unbundled local switching. Id. at 11-12.

In its brief, MCI argues that Ameritech must provide competing carriers all technically feasible transmission facilities, features, and functions. Ameritech MCI says, requires requesting carriers to purchase dedicated facilities, and then to make arrangements to share them, but refuses to make common transport available in any form, notwithstanding requests from both MCI and AT&T. Citing the testimony of AT&T witness Fonteix, MCI contends that Ameritech's refusal to do so is inconsistent with the requirements of the FCC Order. MCI Brief at 16-17 (citing AT&T Ex. __0 at 29). MCI further argues that, as Staff maintains, requiring carriers to purchase dedicated transport to provide end-to-end telecommunications service will result in inefficient utilization of the network. MCI Brief at 17 (citing Staff Ex. 4.02 at 9). MCI also argues in its brief that Ameritech is not currently providing unbundled local switching to any provider, and that Ameritech thus has failed to comply with the requirements of Section 271.

Sprint

In its brief, Sprint suggests it is undisputed that Ameritech Illinois does not provide unbundled local switching to any competing carrier. Sprint Brief at 12 (citing Ameritech Ex. 2.2, Schedule 1). Sprint states that it agrees with Staff witness Terkeurst that, as long as there are checklist items that are not being provided at all, then Ameritech has not met the requirements of § 271 and, derivatively, of the checklist. Sprint Brief at 12 (citing Tr. 1488-89).

Staff

Staff witness Jennings commented on three areas of Ameritech's ULS offering in its testimony. First, Staff testified that it agrees with Ameritech's position on payment of compensation between purchasers of ULS and other carriers in all but one respect: it disagrees with Ameritech proposed ULS service that requires carriers to pay any originating and/or terminating access charges to Ameritech. Staff Ex. 4.00 at 6. Staff reiterated this position in its rebuttal testimony, Staff Ex. 4.01 at 8; Staff Ex. 4.02 at 8-9, and in the live testimony phase of this proceeding. Tr. 1598-99.

Second, Mr. Jennings suggests that "common transport" is a network element and should be priced accordingly, although he is not aware of any carrier that has requested common transport as an unbundled network element in any of the arbitration proceedings. It is contended that requiring carriers to purchase dedicated transport to provide end-to-end telecommunications service will result in inefficient use of the network, as carriers will find it costly to purchase dedicated transport from an end office to other end offices; rather, they will purchase ULS and dedicated transport to an Ameritech tandem office, resulting in a situation where traffic that normally would be routed to an adjacent end office will be routed to an Ameritech tandem and then to the adjacent end office. In its supplemental rebuttal testimony, Staff contends that this could exhaust the capacity of the tandem. Staff Ex. 4.02 at 9-10.

In its brief, Staff reiterates these positions and states that Ameritech has a duty to provide ULS on an unbundled basis at any technically feasible point and on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. Staff Brief at 75. Staff also observes that the FCC

TAB E-42

96-0404

H.E PROPOSED ORDER

defines the ULS element to include all vertical features, Centrex, switching, and any technically feasible customized routing functions. Staff Brief at 75 (citing First Report and Order, ¶ 412). According to Staff's calculations, no new LEC is currently purchasing ULS from Ameritech. The Staff therefore recommends that the Commission find that Ameritech Illinois does not meet the Section 271(c) requirements for this item.

Ameritech

Ameritech contends that it provides ULS in full compliance with its checklist obligations. It states that it makes ULS available under the Commission-approved terms and conditions of its interconnection agreement with AT&T, and has developed methods and procedures to provide ULS whenever ordered. Ameritech Ex. 2.2, Schedule 2, at 6; Tr. 667-71. In addition, it states that requesting carriers may obtain all ULS functions in a single element on a per-line basis, in full compliance with the FCC's regulations. Ameritech further testifies that it will provide any technically feasible custom routing arrangement on request. AI Ex. 1.0 at 31-32.

Although they have not requested it, Ameritech also states that ULS is available to CCT, MFS, and TCG. Ameritech Ex. 2.2, Schedule 2, at 6; Tr. 891, 1020-21. It suggests that this is because, as a general proposition, carriers such as CCT, MFS, and TCG that install their own switches are not likely to have any need for ULS from Ameritech. Ameritech Ex. 1.1 at 7-9.

In response to the arguments of AT&T, CompTel, and Staff that the responsibility for billing carrier access charges has not been properly allocated between Ameritech and the ULS subscriber, Ameritech argues the following. It first notes that, with respect to intrastate carrier access charges, it will suppress local switching charges for intrastate originating traffic, and that no party opposed this aspect of its ULS offering. As to the issue of how to treat terminating access, Ameritech notes that it initially proposed not to bill the ULS subscriber for use of the switch to terminate the traffic, a proposal whereby Ameritech would incur the costs and collect the associated charges to the IXCs. Ameritech Ex. 1.1 at 51-52. In light of the fact that CompTel does not support this approach, however, Ameritech states that it is not opposed to conforming its treatment of originating and terminating access traffic. It notes, however, as Staff has acknowledged, that tracking and billing traffic terminating at the local switch presents operational difficulties. Thus, Ameritech suggests that the Commission should direct it and Staff to develop a methodology that would allow the ULS carrier to receive access charge compensation for terminating traffic. Ameritech notes that Staff has indicated that it is willing to assist in this effort.

With respect to interstate charges, CompTel and Staff oppose Ameritech's proposal to continue billing IXCs the interstate carrier common line charges ("CCL") and residual interconnection charge ("RIC"). Ameritech rejoins, however, that this issue falls solely within the province of the FCC. Whether, and under what circumstances, incumbent LECs would be allowed to continue to collect these "subsidy" rate elements in a ULS environment was a hotly contested issue before the FCC in Docket 96-98. In its First Report and Order, the FCC concluded that transitional billing of these interstate rate elements by the incumbent LECs would be permitted. First Report and Order, ¶¶ 718-20. Although this regulation and many others have been stayed by the Eighth Circuit, Ameritech rejects CompTel's argument that its decision to continue billing these rate elements to the IXCs is therefore improper, suggesting that only the FCC can make that determination. As to Staff's view that ULS subscribers are entitled to both interstate and intrastate

TAB E-43

96-0404
H.E PROPOSED ORDER

access charges, Ameritech notes that Staff took the position in the Wholesale/Resale Order proceeding that this Commission did not have the authority to determine how interstate access charges would be treated, absent a delegation of authority from the FCC. Wholesale Order at 61. The FCC did not so delegate its authority; it preserved only the states' authority to address intrastate access charges. 47 C.F.R. § 51.515.

Regarding the argument of AT&T, CompTel, and Staff that the unbundled transport options offered by Ameritech for use in connection with ULS are incomplete, in that "common transport" is treated as a service (with service-based prices), rather than as an unbundled network element (with unbundled network element-based prices), Ameritech replies that this issue reduces to a dispute over pricing for the FCC. Ameritech suggests that the debate is over whether Ameritech should be required to offer an option of ULS combined with what the parties refer to as "common transport." In recognition of the fact that the use of end-to-end dedicated facilities might not always be economic for all carriers, Ameritech explains that it provides a hybrid option whereby ULS subscribers may combine a network element (ULS) with a service it offers (e.g., wholesale usage) that rides on the public switched network. Ameritech Ex. 1.1 at 56-57. Thus, it is argued that, notwithstanding CompTel's testimony, Ameritech is neither requiring ULS subscribers to use a "separately engineered, parallel, interoffice network" nor denying them use of the "same routing algorithms and interoffice facilities to complete local calls as Ameritech Illinois." CompTel Ex. 1.2 at 13-14. Thus, Ameritech says, the issue here is simply a debate over price.

Ameritech next contends that, while CompTel and several other IXC's have sought to characterize "common transport" as a network element, FCC regulations require only that Ameritech unbundle two types of interoffice transmission facilities: dedicated and shared, 47 C.F.R. § 51.319, both of which Ameritech provides. It thus suggests that the FCC will determine whether "common transport" is a network element when it reconsiders its First Report and Order. Section 251(d) of the Act vests in the FCC the authority to establish, in the first instance, regulations that define network elements and to determine which network elements must be provided to competing carriers.

Commission Conclusion

There are various problems with Ameritech's compliance with this checklist item. First and foremost, Ameritech's proposed ULS service should not require carriers to pay any originating and/or terminating access charges to Ameritech. Ameritech is simply not entitled to continue to collect interstate access charges since it is not providing access to the end user through unbundled local switching. Such collection directly contradicts the our Wholesale/Platform Order in Docket 95-0458.

Second, Ameritech states that it has developed methods and procedures to provide ULS when ordered. However, internal testing of ULS has just begun and Ameritech has not provided any evidence of the results of those tests. Consistent with our standard that with respect to a particular checklist item, all systems must be in place and there must be sufficient testing of the item so that this Commission can have a high level of confidence that said checklist item will function as expected. This is not yet the case with ULS at this time.

TAB E - 44

96-0404

H.E PROPOSED ORDER

Furthermore, Ameritech's ULS offering does not include the customized routing of operator services and directory assistance ("OS/DA") which is required to be provided as part of unbundled local switching. The FCC's regulations provide that Ameritech is required to provide requesting carriers with "nondiscriminatory access" to "local switching capability," which includes "any technically feasible customized routing functions provided by the switch." 47 C.F.R. § 51.319. In its First Report and Order, the FCC stated (at ¶ 536) that incumbent LECs are required "to the extent technically feasible, to provide customized routing, which would include such routing to a competitor's operator services or directory assistance platform." Before Ameritech can be deemed to have met the checklist item for unbundled local switching, it must make available customized routing of the ULS-purchasing carrier's OS/DA traffic as a standard offering.

Accordingly, this checklist item has not been met.

7. 911, E911, and Operator Call Completion Services

Positions of the Parties and Staff

Checklist item (vii) requires Ameritech Illinois to provide nondiscriminatory access to: (I) 911 and E911 services; (II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and (III) operator call completion services.

Aside from the few issues discussed by Staff in its brief, nondiscriminatory access to 911, E911, and operator call completion services was basically not a contested issue in this proceeding. Staff maintains that the dispositive issue is whether Ameritech is actually furnishing nondiscriminatory access to 911, E911, and Operator Call Completion services. Staff Brief at 78. It notes that no party has suggested that Ameritech is making 911 and E911 services available in a nondiscriminatory manner, and recommends that the Commission find that the 911 and E911 agreement between CCT and Ameritech is nondiscriminatory. Staff also concedes that Ameritech is furnishing 911, E911, and directory assistance services to CCT. Staff asserts, however, that Ameritech Illinois is not furnishing, and therefore not "providing," operator call completion services to CCT. Staff Brief at 80 (citing Ameritech Ex. 2.2, Schedule 1, at 12-13). Since Section 271(c)(2)(B)(vii) separately enumerates 911, E911, directory assistance, and operator call completion services, Staff thus recommends that the Commission find that checklist item (vii) has not been met.

Ameritech argues that it satisfies the competitive checklist for this service by providing access to 911, E911, OS/DA, and operator call completion services to TCG, MFS, and CCT on a nondiscriminatory basis through its agreements with those parties. Ameritech witness Dunny testified that the Company is providing 911 and E911 services to CCT, MFS, and TCG; operator call completion to TCG; and directory assistance services to MFS. Ameritech Ex. 2.2, Schedule 1-2. In reply to Staff's contention that Ameritech is not providing operator call completion services to CCT, Ameritech reiterates its position that to provide means either to make available or to furnish. As Ameritech Illinois makes operator call completion services available to CCT, the Company urges the Commission to find that it has satisfied the requirements of the Act.

TAB E-45

96-0404

H.E PROPOSED ORDERCommission Conclusion

We find that Ameritech satisfies the checklist requirements with respect to provision of nondiscriminatory access to 911, E911, and operator call completion services. The record evidence demonstrates that Ameritech is actually furnishing 911 and E911 services to CCT, MFS, and TCG; operator call completion services to TCG; and directory assistance services to MFS, pursuant to its interconnection agreements with those parties. No one argues that Ameritech is providing these services in a discriminatory manner. Although Staff notes that Ameritech is not actually furnishing operator call completion services to CCT, this item is available to CCT in a fashion that meets our standards for availability. Therefore, we find that Ameritech has satisfied this portion of the competitive checklist.

8. White Pages

Checklist item (viii) requires Ameritech Illinois to provide white pages directory listings for customers of the other carrier's telephone exchange service.

Positions of Parties and Staff

Although, in their direct testimony, AT&T and Sprint challenged Ameritech provision of white pages listings, only Staff continues to raise the issue. In its direct testimony, Staff witness Tate noted that Ameritech already provides white pages listings to other carriers via the parties' negotiated agreements. Staff Ex. 6.00 at 5. Mr. Tate further observed that the FCC has declined to include additional items such as White Page or Yellow Page directories, "customer guides," and Information Pages within the meaning of "directory assistance and directory listings" as used in Section 251(b)(3) of the Act. Id.

In its brief, Staff does not contest Ameritech position that customers of competing carriers will be provided with listings in Ameritech's white pages directories. Staff Brief at 81. Staff notes that CCT and MFS have not disputed the adequacy of Ameritech's white pages listings, and concurs with Ameritech's analysis that the FCC has not imposed any additional obligations on ILECs regarding access to directories. Staff accordingly recommends that the Commission find that the directory listings arrangement between Ameritech and CCT is nondiscriminatory. Staff Brief at 82. As to pricing, concerning which the Act is silent, Staff observes that competitive local service subscribers will receive one free listing for each directory that Ameritech publishes that covers the address of the subscriber. Where the non-Ameritech subscriber requests to be listed in a "foreign" directory (one outside its address area), Staff notes, Ameritech Illinois will charge a reasonable annual fee equal to that charged to its own customers. In summary, Staff recommends that the Commission find that Ameritech satisfies the checklist requirements of the Act for white page directory listings. Staff Brief at 84.

Ameritech contends that its provision of white pages satisfies the requirements of the checklist. The Company provides customers of competing carriers with one free listing in each directory that it publishes in that customer's service area, and this Commission and the FCC have both rejected the argument that ILECs should be required to offer other services, such as yellow page listings, information pages listings, and the distribution of directories. As the FCC explained in its Second Report and Order, ¶¶ 138-48, "the only requirement to be placed on LECs was the

TAB E-46

96-0404

H.E PROPOSED ORDER

necessity of providing directory listings to competing providers in readily accessible magnetic tape or electronic formats in a timely fashion upon request." This Commission likewise stated in the AT&T arbitration that Ameritech's provision of white pages access in fact "exceeds the minimum requirements of the Act and furthers its competitive goals" Dockets 96-AB-003 & 96-AB-004, Order at 27-28. Ameritech argues that there is no reason to revisit this issue and urges the Commission to reject any argument to expand the Act's requirements. Mr. Dunny provides additional reasons why Ameritech's position should prevail on this issue. Ameritech Ex. 2.1 at 33-36, 34-38.

Commission Conclusion

Both the FCC and this Commission have rejected the argument that Ameritech should be required to offer yellow page listings, information pages listings, and the distribution of directories. Indeed, we ruled in the AT&T arbitration that Ameritech's provision of white pages access exceeded the minimum requirements of the Act, Dockets 96-AB-003 & 96-AB-004, Order at 27-28, and the FCC has made clear that an ILEC's obligations in this area do not extend beyond providing directory listings to competing providers. Second Report and Order, ¶¶ 138-48. As there is no reason to revisit this issue, we find that Ameritech Illinois has fully satisfied the checklist requirements for white pages listings.

9. Numbering Administration

Checklist item (ix) requires Ameritech Illinois to provide, until the date by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange customers and, after that date, compliance with such guidelines, plan, or rules.

Positions of Staff and Ameritech

No party to this proceeding has disputed that Ameritech's provision of numbering administration complies with the checklist requirements, and in its brief Staff expresses agreement with Ameritech's position that: (1) until new numbering administration guidelines are established, Ameritech will continue to assign central office codes under existing industry guidelines and regulatory rules, under the oversight and complaint jurisdiction of the FCC and this Commission; (2) in the meantime, Ameritech continues to make reasonable efforts to transfer its number administration responsibilities to a neutral third party; and (3) Ameritech provides nondiscriminatory access to telephone numbers for assignment to other carriers' telephone exchange service customers in accordance with current Central Office Code (NXX) Assignment Guidelines and the current NPA Relief Planning Guidelines. Staff further explains that, since Ameritech does not charge for telephone number assignments and no party has alleged discriminatory treatment in receiving them, the Commission need not address the issue of discrimination. Staff concludes that the evidence of record supports a finding that Ameritech is providing checklist item (ix) to CCT, as well as numerous other carriers in Illinois, in accordance with the requirements of the Act.

Ameritech contends in its testimony and brief that it has complied fully with the requirements of Section 271(c)(2)(B)(ix) regarding access to telephone numbers. The Company

TAB E-47

96-0404

H.E PROPOSED ORDER

notes that no party has contested this issue, and that Staff concurs with its position. Ameritech Ex. 2.0 at 74-75; Ameritech Ex. 2.1 at 38; Ameritech Ex 2.2, Schedule 1, at 14. Thus, Ameritech urges the Commission to find that it has satisfied the requirements of the Act.

Commission Conclusion

The Commission finds that Ameritech satisfies this checklist item.

10. Databases and Associated Signaling

Checklist item (x) requires Ameritech Illinois to provide nondiscriminatory access to databases and associated signaling necessary for call routing and completion

Positions of Parties and Staff

Although, in earlier phases of this proceeding, AT&T and MFS submitted testimony regarding databases and associated signaling, only Staff and TCG address the subject in their briefs. Accordingly, our discussion will focus on the issues TCG and Staff raise.

TCG

In its brief, TCG complains that Ameritech is not satisfying the requirements for provisioning AIN services because Ameritech has failed to develop written procedures and benchmarks for provisioning such services and for developing ordering interfaces for such services. TCG Brief at 4. TCG states that Ameritech has excessive discretion to determine the manner in which it will fulfill its AIN provisioning obligations.

Staff

Staff has not contested the scope of Ameritech's signaling networks and call related databases, which includes line information database (LIDB), toll free calling database, advanced intelligence network (AIN), and databases used for call routing and completion, as required by 47 C.F.R. § 51.319(e). Staff Brief at 86. Rather, Staff maintains that, while Ameritech's agreements with MFS and TCG address access to signaling and call-related databases, the CCT agreement does not. Staff acknowledges that Ameritech nonetheless provides such access to CCT, but argues that Ameritech has not satisfied the checklist because CCT's access is not provided pursuant to the terms of a Section 252 agreement.

Ameritech contends that it fully complies with the Act's requirements and the FCC's rules governing provision of access to its databases and associated signaling necessary for call routing and completion. The Company points out that it is currently making available and furnishing access to databases and signaling to CCT, MFS, and TCG under its interconnection agreements with those carriers. Ameritech Ex. 2.2, Schedule 2, at 10. As Staff notes, the scope of Ameritech's provision of signaling networks and call related databases is not at issue; all that is contested is whether CCT is receiving them pursuant to an arbitrated agreement. Regarding Staff's contention that the necessary provisions are not in the CCT agreement, Ameritech rejoins by reiterating its position that CCT is entitled, pursuant to the MFN clause in its agreement with Ameritech, to the benefit of the arbitrated provisions of the AT&T Agreement.

TAB E-48

96-0404

H.E PROPOSED ORDER

Concerning TCG's claim that Ameritech has failed to develop written procedures and benchmarks for provisioning AIN services and for developing ordering interfaces for such services, Ameritech answers that its process for provisioning AIN to competing carriers is comparable to the manual process that Ameritech uses to provide AIN services for its own, retail customers. Ameritech also responds to TCG's concern that it has excess discretion in its provisioning of AIN by a flexibility of AIN technology, which must be customized to the network architectures and switching configurations of the requesting carrier. Ameritech's manual ordering process permits such customization, to the benefit of all competing carriers.

Commission Conclusion

The Commission finds that Ameritech complies with the Act's requirements and the FCC regulations pertaining to provision of access to its databases and associated signaling necessary for call routing and completion. It provides access to its signaling network, call-related databases, and service management systems through its Signal Transfer Points, in the same manner and via the same signaling link functionality used by Ameritech itself. Ameritech currently is making available and furnishing access to databases and signaling to CCT, MFS, and TCG pursuant to interconnection agreements with those carriers. No party contests the sufficiency of this access. Regarding Staff's concern that CCT is not being provided access to signaling and call related databases pursuant to an arbitrated agreement, we reject that argument on the ground that CCT has access, through the MFN clause in its agreement, to the same databases and signaling networks, and on the same terms and conditions, that AT&T is entitled to under its arbitrated agreement with Ameritech. Respecting TCG's concern that Ameritech has excessive discretion in the provisioning of AIN, we agree with Ameritech Illinois that the need for customization of AIN to the network architectures and switching configurations of the requesting carrier is consistent with the use of a manual ordering process.

11. Number Portability

Checklist item (xi) requires Ameritech Illinois to provide, until the date by which the FCC issues regulations pursuant to Section 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, Ameritech Illinois must fully comply with such regulations

Positions of Parties and StaffAT&T

AT&T witness Judith Evans testified that, while Ameritech is required to fully implement permanent number portability ("PNP") in the entire Chicago MSA, MSA 1, by December 31, 1997, it is not required to make PNP available on a statewide basis outside of the Chicago area until at least June 1, 1999. (Evans Direct, AT&T Ex. 8.0 at 10). Therefore, the availability of effective interim number portability arrangements have become even more critical, and particularly important to carriers, given the uncertainty which has arisen as to whether the PNP date in MSA 1 will be met (AT&T Ex. 8.0 at 11-12).

TAB E-49

96-0404
H.E PROPOSED ORDER

AT&T contends that Ameritech has failed to meet its number portability obligations by its refusal to provide route indexing as an interim number portability option, notwithstanding the fact that route indexing is technically feasible and has been voluntarily provided by at least three other RBOCs. AT&T notes that the effect of Ameritech's position is clearly anticompetitive because the practical effect of denying route indexing as an interim number portability option essentially eliminates AT&T's ability to offer medium and large business customers the same service and functionality that Ameritech can offer them.

Ms. Evans testified that while the methods Ameritech currently offers are adequate for AT&T's smaller customers, they inefficient, are too expensive or lack the functionality necessary to serve other carriers' medium to large business customers. Route Indexing-Portability Hub ("RI-PH") is the best and most efficient interim number portability solution that will satisfy carrier's technical requirements for serving its medium to large business customers at a level of service they require from the carrier. (AT&T Ex. 8.0 at. 14-15, 17). By not offering RI-PH, Ameritech may fend off competition for the local business of these large business customers.

Furthermore, while Local Exchange Routing Guide ("LERG") reassignment is the best interim solution for serving carrier's largest business customers (a solution Ameritech has agreed to offer), the effectiveness of LERG reassignment is dependent upon the ability to use RI-PH as a transitional method while the LERG is undergoing reassignment throughout the industry. Therefore, Ameritech's unwillingness to provide RI-PH at least as a transitional method effectively denies carriers the ability to take advantage of LERG Reassignment, and effectively denies carriers the opportunity to serve yet another competitively significant customer segment -- the very large national business customer. (AT&T Ex. 8.0 at. 22-23, 28).

Staff

Staff notes that Ameritech currently is providing transitional number portability, pursuant to state tariffs it has filed with the Commission, through remote call forwarding (RCF) and direct inward dialing (DID) technology, which the FCC approved in its Telephone Number Portability First Order, CC No. 95-116 ("Portability Order"). Staff proposes that Ameritech also should provide LERG Reassignment as an interim number portability option. Staff Ex. 6.0 at 9-10.

In its brief, Staff notes that Ameritech Illinois' agreements with CCT, MFS, and TCG address the provisioning of INP, and that the Commission has approved Location Routing Number ("LRN") as the PNP solution in the Chicago MSA, with full implementation expected by the beginning of the fourth quarter of 1997. Staff Brief at 88. It further argues that, given that PNP will not take effect until late 1997, it is important that any INP method be technically feasible now, available now, not overly costly, and able to port numbers with a minimum loss of functionality. Although Ameritech suggests that RCF and DID both satisfy federal law and meet the needs of the industry, Staff has in prior arbitrations recommended that Ameritech offer NXX migration (LERG Reassignment), and Ameritech has agreed to add this option. According to Staff, the record shows that Ameritech currently provides INP to MFS through RCF and DID. Ameritech's agreement with MFS allows INP through NXX migration, but the agreements with CCT and TCG do not provide for NXX migration. Staff suggests true number portability is not yet available, and recommends that the Commission decline to determine whether Ameritech will be in full compliance with the FCC's prospective regulations. Staff Brief at 89. As to the issue of INP,

TAB E-50

96-0404

H.E PROPOSED ORDER

however, Staff notes that the CCT agreement provides for competitively neutral cost recovery and that the MFS and TCG rates for INP have been suspended pending approval of a competitively neutral cost recovery mechanism. Accordingly, Staff urges that the Commission find that Ameritech has met the checklist requirements for number portability at this time.

Ameritech

Ameritech testified that it currently provides interim number portability in a manner consistent with the requirements of Section 271(c)(2)(B)(x), and suggests there is no serious question that it is in compliance with this Checklist item. Ameritech Ex. 2.1 at 39; Ameritech Ex. 2.2, Schedule 1, at 14.

In response to AT&T's suggestion that Ameritech will later be reluctant to provide PNP, Ameritech contends that its future compliance with that requirement is irrelevant here and can only be addressed in the unlikely event that such a problem arises. § 271(c)(2)(B)(xi). It is suggested that AT&T's testimony on this issue "clearly demonstrates how far AT&T is willing to go to invent issues in this proceeding, whether or not they have any merit." Ameritech Ex. 2.1 at 40. Ameritech's national leadership in number portability is evidenced by the FCC's decision to perform a number portability field test in Chicago, and AT&T witness Evans and AT&T representative Dan Noorani "have repeatedly expressed their satisfaction with the progress of number portability in Illinois." Ameritech Ex. 2.1 at 40.

As to AT&T's contention that Ameritech must provide RI-PH as an interim number portability option, Ameritech notes that the Commission has twice rejected this proposal — in the Customers First order and again in the AT&T arbitration. Dockets 94-0096 (et al. (cons.)), Order at 110-11; Dockets 96-AB-003/96-004, Order at 25-26. Ameritech urges the Commission to reject AT&T's proposal again, on the basis that RI-PH is an intermediate-term solution, the implementation of which would divert resources from developing a long-term solution. It also suggests that AT&T has exaggerated the significance of earlier investigations of RI-PH, the technical feasibility of which has not been demonstrated. Ameritech Ex. 2.1 at 42-45. As the Commission stated in the AT&T arbitration, "[t]he likelihood is that RI-PH would be obsolete before it was ever needed." Dockets 96-AB-003 & 96-AB-004, Order at 25.

Regarding Staff's suggestion that Ameritech should provide LERG Reassignment, Ameritech testified that it supports LERG Reassignment when an entire NXX belongs to a single customer, or when a substantial portion of an NXX belongs to a single customer and the remainder is reserved or otherwise unused. Ameritech Ex. 2.1 at 42. Accordingly, Ameritech Illinois urges the Commission to find, as Staff recommends, that it satisfies the checklist requirements for this item.

Commission Conclusion

The Commission finds that Ameritech currently provides interim number portability in a manner consistent with the requirements of Section 271(c)(2)(B)(x). With respect to interim number portability, we stand by our prior decisions not to require Ameritech to provide RI-PH as an INP option. Docket Nos. 94-0096 (et al. (cons.)), Order at 110-11; Dockets 96-AB-003/96-004, Order at 25-26. We also find reasonable the limitations that Ameritech Illinois places on its LERG

TAB E-51

96-0404

H.E PROPOSED ORDER

Reassignment offering. As to AT&T's concerns that Ameritech may prove reluctant to provide permanent number portability are unsupported and premature. The Commission will not assume that Ameritech will evade its legal obligations.

12. Dialing Parity

Checklist item (xii) requires Ameritech Illinois to provide nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 251(b)(3).

Positions of the Parties and the Staff**CompTel**

CompTel introduced testimony that competing carriers must be able to "presubscribe" the local operator (0-) and directory (411) dialing patterns to operator and director systems of its choice. CompTel Ex. 1.0 at 20-21. CompTel witness Gillan suggested that Ameritech has indicated that dialing parity may not be technically feasible, but argued that Ameritech must solicit and obtain the necessary software to comply with the Act's dialing parity requirements. CompTel Ex. 1.0 at 21.

Staff

In its direct testimony, Staff explained that MFS customers who have subscribed to local exchange service from MFS can make a local call to a local customer of Ameritech Illinois within the same local calling area without dialing any extra digits or codes. Staff witness Tate further stated that Ameritech's modified intraLATA toll tariff, which became effective on August 5, 1995, complies with both the Commission's Customers First Order and the IntraLATA Toll Dialing Parity Rule.

In his rebuttal testimony, however, Staff witness Gasparin testified concerning access to 411 and 611 dialing. Mr. Gasparin noted that the FCC's Second Report and Order in Docket No. 96-98 states, at paragraph 22, that:

With dialing parity, a telephone customer can preselect any provider of telephone exchange service or telephone toll service without having to dial extra digits to route a call to that carrier's network.

Thus, Mr. Gasparin concluded, if Ameritech provides "abbreviated" dialing for access to its directory assistance, repair services, or other, similar services, it must provide parity to competing carriers. Staff Ex. 3.01 at 5. While Mr. Gasparin could not provide a definitive solution to the problem, he suggested that Ameritech conceivably could offer parity for abbreviated dialing via line class codes, utilization of AIN, or by developing other software/hardware solutions. He noted that Ameritech could also meet its parity obligations in this context by eliminating its 411 and 611 dialing programs, although he stated that consumer familiarity with those programs counseled against that option, except as a last resort. As to the feasibility of line class codes, he recommended that the Commission direct Ameritech to test them and opined that the Company should be able to demonstrate whether they are feasible. Staff Ex. 3.01 at 4-7.

TAB E-52

96-0404

H.E PROPOSED ORDER

In its brief, Staff expresses disagreement with Ameritech's position that it has satisfied the checklist requirements for dialing parity. Staff suggests that customers of competing carriers should be able to dial the exact same number of digits for the services described in Section 251(b)(3), which, it contends, includes all services. It is insufficient, argues Staff, for Ameritech Illinois to "warm transfer" calls in order to satisfy the dialing parity requirements. Staff Brief at 64.

While Staff acknowledges that the Commission found it sufficient for Ameritech to warm transfer calls in Consolidated Docket 95-0458, it maintains that the issues in that docket centered around the technical feasibility of the custom routing of 611 service, and whether 611 service should be resold, not around the issue of dialing parity. Until Ameritech either implements a technical solution that allows resellers' end users to dial 611 and reach the reseller or, alternatively, expands the 611 service repair number to ten digits, Staff recommends that the Commission find that the Company has not complied with checklist item (xii).

Ameritech

Ameritech argues that it is both making available and furnishing local dialing parity by providing nondiscriminatory access to services and information that permit requesting carriers to implement dialing parity in accordance with Section 251(b)(3) of the Act. According to Ameritech, Section 251(b)(3) requires all LECs to provide dialing parity to competing providers of local service and imposes on LECs the duty to provide nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings with no unreasonable delay. Ameritech Illinois witness Dunny testified that Ameritech furnishes the components of dialing parity in the form of number portability and nondiscriminatory access to TCG, MFS, MFS, and CCT pursuant to interconnection agreements with each carrier. Ameritech Ex. 2.2, Schedule 2, at 12. As a result of these agreements, Ameritech Illinois contends, customers of other local exchange carriers and Ameritech are able to dial each other using the same 7-digit/11-digit dialing patterns that apply to calls between customers who subscribe to service from the same carrier. AI Ex. 2.0 at 65. Ameritech also points out that it has been furnishing 2-PIC presubscription for toll calls since April 7, 1996.

With regard to Staff's position that, if Ameritech utilizes abbreviated dialing patterns for repair services, then it must provide comparable dialing patterns to other carriers, Ameritech Illinois rejoins that Staff's position is inconsistent with Section 251(b)(3), which provides (emphasis added):

DIALING PARITY - The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings, with no unreasonable dialing delays.

Ameritech contends that neither this provision nor the FCC regulations obligate it to provide dialing parity for repair service calls. Such calls are administrative in nature and beyond the scope of Section 251(b)(3). The FCC's Second Report and Order does not define dialing parity in terms of NII dialing patterns. Moreover, it is argued, no party contests the fact that customers of competing carriers do have access to directory assistance or repair services using precisely the same

TAB E-53

96-0404

H.E PROPOSED ORDER

dialing patterns utilized by Ameritech customers. For example, the customers of a reseller or carrier purchasing unbundled local switching can dial 411 to reach Ameritech directory assistance. Similarly, assuming that a facilities-based carrier chooses to program its switch to accept 411 calls, customers of that carrier can also dial 411 to reach that carrier's directory assistance platform or that of another provider. Ameritech Ex. 2.2 at 9-10. Alternatively, Ameritech notes, the carrier either can use these same dialing patterns to access directory assistance services provided by that carrier, or request selective routing of directory assistance calls from Ameritech Illinois. Ameritech Ex. 2.2 at 10; Ameritech. Ex. 5.1 at 11-13.

Ameritech also testifies that it offers dialing parity with respect to repair service calls, although it again maintains that these calls are beyond the scope of the description of dialing parity under Section 251(b)(3). As an example, Ameritech Illinois explains that when a reseller's end user customer dials 611, that customer is provided the appropriate repair number for the reseller and "warm transferred" to the reseller's repair bureau, as required by the Illinois Wholesale Order in Docket 95-0458/0531, at 54-55. And, as with 411 calls, a customer of a carrier utilizing its own switch can dial 611 to reach that carrier's repair service, provided that the carrier chooses to program its switch to accept 611 calls. It is therefore argued that Staff's concerns are unfounded, even assuming that Ameritech Illinois has an obligation to provide dialing parity for such calls under the Act and the competitive checklist.

With respect to CompTel's contention that Ameritech is not providing dialing parity because carriers cannot "presubscribe" to the local operator/directory assistance service of another provider, Ameritech rejoins that CompTel's position is unsupported by the FCC's Second Report and Order, which does not require that presubscription be extended to 411 or 0- dialing calls. Moreover, Ameritech argues, this Commission's rules specifically exempt 411 and 0- calling — as well as 611 calls — from any presubscription obligation. 83 Ill. Adm. Code 773.120(c).

Finally, Ameritech notes that the Commission addressed dialing parity issues in the Sprint arbitration. The Commission approved Ameritech Illinois' proposal to provide access to 411/611 numbers, including the use of warm transfers. Sprint Arbitration Decision, Docket 96-AB-111, at 18-20. As its position in this proceeding matches that approved in the Sprint arbitration, Ameritech Illinois contends that there is no reason to revisit the issue and that it should be found to have satisfied the Act and the competitive checklist.

Commission Conclusion

The FCC specifically requires dialing parity for 611 calls. In CC Docket No. 92-105, released February 19, 1997, the FCC stated that "(w)ith multiple LECs in the local market, access to these codes [411 and 611] for repair and business office uses by only one facilities-based carrier serving that market would be anti-competitive." In order for Ameritech to meet the dialing parity requirement for 611 service, Ameritech should either implement a technical solution to allow resellers' end users to dial 611 and reach the reseller or alternatively, expand the 611 service repair number to ten digits, the same number of digits a reseller would use for its service repair center. Until this occurs, Ameritech is not in compliance with checklist item (xii).

TAB E-54

96-0404
H.E PROPOSED ORDER

But for dialing parity with respect to 611 calls, the Commission is of the opinion that Ameritech Illinois is both making available and furnishing local dialing parity by providing nondiscriminatory access to services and information that permit requesting carriers to implement dialing parity in accordance with Section 251(b)(3) of the Act.

CompTel's argument that Ameritech Illinois is not providing dialing parity because carriers cannot "presubscribe" to the local operator/directory assistance service of another provider is unsupported by the FCC's Second Report and Order, which does not require that presubscription be extended to 411 or 0- dialing calls. Moreover, as Ameritech Illinois observes, this Commission's rules specifically exempt 411 and 0- calling — as well as 611 calls — from any presubscription obligation. 83 Ill. Admin. Code § 773.120(c).

13. Reciprocal Compensation

Checklist item (xiii) requires Ameritech Illinois to provide reciprocal compensation arrangements in accordance with the requirements of Section 252(d). 47 U.S.C. §271(c)(2)(B)(xiii).

Positions of Parties and Staff

Although several parties addressed reciprocal compensation in their testimony, only MCI and Staff raise reciprocal compensation issues in their briefs.

MCI

In its brief, MCI contends that the disparity between the rates for reciprocal compensation found in the various negotiated and arbitrated agreements suggests that not all of them are cost-based and therefore that Ameritech fails to meet the pricing requirements of the checklist. MCI Brief at 19-20 (citing Staff Ex. 4.00 at 17; Tr. 325-26 (Gebhardt)). MCI further suggests that Ameritech's reciprocal compensation arrangements do not comply with the checklist because they provide that carriers will be compensated at the end office rate, rather than the higher, tandem rate required by the FCC. MCI Brief at 20 (citing AT&T Ex. 6.0 at 12; FCC Order, ¶ 1090).

Staff

In prefiled testimony, Staff recommended that the Commission use the same pricing methodology for reciprocal compensation that Staff proposed for interconnection and network elements. Staff witness Jennings testified that the reciprocal compensation rate of \$0.009 per minute contained in the CCT agreement is not consistent with Section 252(d). Staff Ex. 4.00 at 17-18.

In its brief, Staff emphasizes that the pricing methodology it proposed for interconnection and network elements is consistent with the Commission's prior Order in Docket 94-0096 et al., Consol. ("Customers First Order"), where a rate of \$0.005 per minute was set for local termination of telecommunications traffic at end offices. Staff Brief at 96. Because the CCT agreement contains prices that do not accord with those prices, or Staff's view of Section 252(d)'s requirements, Staff recommends that the Commission find that Ameritech Illinois is not in compliance with checklist item (xiii). Staff Brief at 97.

TAB E-55

96-0404

H.E PROPOSED ORDERAmeritech

Ameritech argues that Section 271(c)(2)(B)(xiii) requires it to provide billing arrangements through which two carriers recover their costs incurred in transporting and terminating local calls that originate on each other's network in accordance with the pricing standards of Section 252(d)(2).

Ameritech notes that it has entered into interconnection agreements with MFS, TCG, and CCT that provide for the exchange of local traffic and compensation for that traffic. It contends that, given that traffic is already being exchanged between the companies today, reciprocal compensation is already being furnished. As there are no disputed issues concerning Ameritech's provision of reciprocal compensation arrangements in this proceeding, Ameritech Illinois therefore asserts that it has satisfied this element of the competitive checklist.

With respect to pricing, Ameritech asserts that reciprocal compensation rates that the Commission has found to comply with Section 252(d) are available to MFS and CCT pursuant to the MFN clauses in their agreements.

Commission Conclusion

Under Section 271(c)(2)(B)(xiii), Ameritech is required to provide billing arrangements through which two carriers recover their costs incurred in transporting and terminating local calls that originate on each other's network in accordance with the pricing standards of Section 252(d)(2).

Ameritech has entered into interconnection agreements with MFS, TCG, and CCT that provide for the exchange of local traffic and compensation for that traffic. Traffic already is being exchanged between the companies today, thus, reciprocal compensation is already being furnished. Rates complying with Section 252(d) are available pursuant to MFN clauses. The Commission finds that Ameritech's provision of reciprocal compensation arrangements satisfies this element of the competitive checklist.

14. **Resale, Including Stripping and Branding of Operator Services and Directory Assistance**

Checklist item (xiv) requires Ameritech Illinois to provide that telecommunications services are available for resale in accordance with the requirements of Sections 251(c)(4) and 252(d)(3).

Access Network Services

In its brief, Access argues that Ameritech's resale pricing purportedly disadvantages resellers, such as Access, that desire to target high volume customers. As to Ameritech's "re-revised" tariff filings, issued on November 19, 1996, Access admits that they made the wholesale volume discount roughly comparable to the volume discount in Ameritech's retail tariff, but suggests that Ameritech left other objectionable discounts intact. Specifically, Access asserts that, the average effective discount level under Ameritech's wholesale tariff is 17.5%, but the discounts for certain service elements critical for use in serving high volume customers are substantially lower than that figure. For example, Access maintains that the discount for DID trunk terminations that large PBX customers use is only 7.3%, an amount that it alleges is too low for competitors to

TAR E-56